

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BEST GRAPHICS, INC.,

Plaintiff,

Case No. 2:20-cv-01686-PP

v.

BINDERY 1, INC.,

Defendant-Counterclaimant.

JOINT PRETRIAL REPORT

Plaintiff Best Graphics, Inc. (“Best Graphics”) and Defendant-Counterclaimant Bindery 1, Inc. (“Bindery 1”) jointly submit this Pretrial Report pursuant to the Court’s August 7, 2023 Civil Pretrial Order.

1. Summary of Claims.

In September 2018, Best Graphics and Defendant-Counterclaimant Bindery 1, Inc. (“Bindery 1”) executed a Machinery Contract for the purchase of a used Wohlenberg Vento Perfect Binding Line and additional machinery (“the Machinery”) for \$675,000.00. Best Graphics contends that it installed the Machinery in February 2019 and that Best Graphics has provided additional services and parts relating to the Machinery since that time. Bindery 1 has paid \$560,000.00.

Best Graphics is seeking to recover \$115,000, the total of the unpaid balance of the purchase price, as well as interest and fees pursuant to the terms of the contract. Best Graphics alleges claims for breach of contract and unjust enrichment.

Bindery 1 admits it has not paid the final installment payment on the purchase price, but contends that it is not liable to Best Graphics for such payment because the Machinery was never fully installed, does not conform to the specifications of the Machinery Contract, and is not performing as it was represented by Best Graphics, including by not producing “commercially acceptable work.” Bindery 1 further contends that it requested return of the Machinery to Best Graphics within six months, as provided in the Machinery Contract, and that Best Graphics has since that time failed to either get the Machinery fully functioning or remove the Machinery and issue a refund per the Machinery Contract.

As a result, Bindery 1 has asserted counterclaims for breach of contract, breach of express warranties, and violation of Wis. Stat. § 100.18 - Unfair Trade Practice - Misrepresentation, and is seeking a refund and other damages. Best Graphics disputes Bindery 1’s counterclaims.

2. Statement of the Issues.

- Did Bindery 1 breach the purchase contract by failing to make the final payment due?
- Alternatively, was Bindery 1 unjustly enriched by retaining and using the Machinery without making full payment for the Machinery?
- Was the Machinery fully installed?
- Did the Machinery meet the specifications of the Machinery Contract?
- Did Bindery 1 timely demand Best Graphics buy back the Machinery under the 6 Month Assurance or the Buyback Agreement?
- Did the Machinery produce commercially acceptable work after six months?
- Did Best Graphics breach an express warranty, if any, provided under the purchase contract?
- Did Best Graphics make any untrue, deceptive, or misleading representations about the Machinery prior to its sale to Bindery 1 subject to liability under Wis. Stat. § 100.18?

3. Anticipated length of trial. Five days.

4. Name, occupation, and city of residence for each witness.

Plaintiff Witnesses

1. Dan Brahm, principal of Best Graphics. Waukesha, WI.
2. Gary Martin, Muskego, WI. Service Manager, Best Graphics.
3. Mark Spelman, Waukesha, WI. Financial Controller, Best Graphics.
4. Mike Keller, Waukesha, WI. Parts Manager, Best Graphics.
5. Dan Turner, Waukesha, WI. Service technician, Best Graphics.
6. Tom Gale, Waukesha, WI. Service technician, Best Graphics.
7. Dennis Wietrecki, Mount Prospect, IL. Owner, MM Tech Service, Inc. .
8. Andrea Meisner, Germany. Technician for Wohlenberg.
9. Vince Payne, Dallas Center, IA. Vice President of of Colter & Peterson, Inc.
10. Eric Rokitnicki, Des Moines, IA. Owner of Bindery 1, Inc.
11. Renatta Bolen, Des Moines, IA. Vice President of Bindery 1, Inc.
12. Steve Sutton, Des Moines, IA. Former operator at Bindery 1, Inc.
13. Todd Dolson, Des Moines, IA. Former operator at Bindery 1, Inc.
14. William Zart, Des Moines, IA. Operator at Bindery 1, Inc.
15. Brenda Campbell, Des Moines, IA. Former operator at Bindery 1, Inc.
16. Brian McDowell, Des Moines, IA. Former plant manager at Bindery 1, Inc.

Defendant-Counterclaimant Witnesses

1. Eric Rokitnicki. Principal Owner of Bindery 1, in Des Moines, IA.
2. Renatta Bolen. Corporate Secretary/Manager of Bindery 1. Des Moines, IA.
3. Brad Emerson. Owner/operator of Fixyourownbindery LLC. St. Louis, MO.
4. Gary Martin. Service Manager, Best Graphics. Muskego, Wisconsin.
5. Steve Sutton. Veterans Service Officer, American Legion of Iowa. Carlisle, IA.
6. Bill Zart. Bindery Operator, Bindery 1. Des Moines, IA.
7. Randy Hale. Bindery Operator, Bindery 1. Des Moines, IA.
8. Janusz Toporek. Bindery Operator, formerly Bindery 1, currently with R.R. Donnelly. Victoria, MN.
9. Brenda Campbell. Maintenance Technician, Mittera. Indianola, IA.
10. Jason Bolen. Vice President, Sales, Bindery 1. Des Moines, IA.

5. Backgrounds and qualifications of expert witnesses.

Plaintiff intends to call Dennis Wietrecki as an expert regarding the Vento Machine, its installation and operational capacity, and its ability to complete commercially acceptable work. Mr. Wietrecki has 45 years of experience in the Graphic Arts Industry, most of which is in the Post Press area. He was a Perfect Bindery Operator for over 10 years. He has 30 years of experience

installing, servicing and providing operator training for perfect binders. He is factory trained on Wohlenberg Perfect Binders and Trimmers, Muller Martini Perfect Binders and Saddle Stitchers, Standard Horizon Trimmers and Collators, and Osako Saddle Stitchers. Mr. Wietrecki helped install the Vento Machine at Bindery 1, has serviced the machine multiple times, and was present for an inspection of the machine in January 2022.

Bindery 1 intends to call Brad Emerson as an expert regarding the Vento Perfect Binder. Mr. Emerson has been engaged in improving and establishing bindery systems, and recommending and selling bindery equipment since 1988. Since 2005, Mr. Emerson has operated his own consulting business, fixyourownbindery LLC, to support improvement of bindery operations without investing a million dollars or more in new equipment; to analyze a bindery's needs and then train existing bindery managers and operators where needed, and/or find the right used machine or machine upgrade for their existing equipment. Through fixyourownbindery LLC, Mr. Emerson has recommended and sold bindery equipment and other bindery automation to both domestic and international clients. Mr. Emerson has had multiple articles on bindery automation and evaluating used bindery equipment published in the leading bindery industry publication in the United States: Binding Edge/PostPress.

6. List of exhibits. See attached Joint Exhibit List. The parties will work together to pare the exhibit lists to eliminate any duplicative exhibits and will subsequently number defendants' exhibit list accordingly. The parties intend to file an amended exhibit list with the final exhibit numbers.

7. Designation of depositions, transcripts to be read into the record.

All deposed witnesses are expected to appear at trial. The parties reserve the right to designate portions of depositions if any witness is unable to attend.

8. Proposed nonstandard *voir dire* questions. See attached joint list of nonstandard questions.

9. Proposed Seventh Circuit Jury Instructions. The parties did not agree on all proposed instructions and shall each be filing separate proposed instructions. The parties have not completed the process of outlining the legal bases for the disagreements but will work together to submit such filings simultaneously.

10. Proposed verdict. The parties did not agree on the form of a Special Verdict and shall each be filing a separate proposed verdict. The parties have not completed the process of outlining the legal bases for the disagreements but will work together to submit such filings simultaneously.

11. Statement regarding court reporter. The parties are content with the Court's recording system.

12. Statement regarding number of jurors. The parties have requested a 12-person jury.

Dated this 22nd day of December, 2023.

FOX, O'NEILL & SHANNON, S.C.

Attorneys for Plaintiff

/s/ Electronically signed by Matthew W. O'Neill

By: _____

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